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NOTES AND COMMENTS

HOST LIABILITY FOR CIVIL DAMAGE UNDER DRAM SHOP ACT

The exigencies of modern business appear to be responsible for the phenomena commonly called the "Office Christmas Party" and the Trade Shows and Industrial Conventions, "Hospitality Suites." Stories concerning these events are without number. It is no great secret that new customers are "won," deals are closed, and that employer-employee relationships are enhanced at these so-called "social" gatherings. A "party" today generally entails some form of liquid refreshment. If, as is generally the case, the liquid refreshment at such affairs takes an alcoholic form, some peculiar legal problems may arise over the liability of the host in the event that a guest becomes inebriated and does harm to other individuals.

Out of such a set of circumstances and in face of the Liquor Control Act,¹ a non-commercial dispenser of liquor may find itself exposed to civil damages, despite the fact that the ostensible purpose of its entertainment was "social." The attempt here is to evaluate the prospect of recovery against a corporate host under the so-called Illinois Dram Shop Act.²

Section 135 of the present Liquor Control Act is the lineal descendant of Section 9 of the original Dram Shop Act of 1874.³ The present Civil Damage Section, 135, has been in force, substantially unchanged, for over 86 years, even during the Prohibition Era.⁴ When re-enacted in 1934, after the repeal of Prohibition, it became readily apparent that the older cases were *stare decisis* upon similar questions.⁵

Under older cases, courts have been prone to construe the Civil Damage Section of the Act strictly,⁶ but cases arising subsequent to its re-enactment appear to be more in harmony with the statement of legislative intent, which reads as follows: "This Act shall be *liberally construed*, to

¹ Ill. Rev. Stat. 1959, Vol. 1, Ch. 43, § 135.

² The Liquor Control Act has been commonly called the Dram Shop Act by virtue of the fact that a liquid containing alcohol is also called a dram.

³ The Dram Shop Act of 1874 was entitled "An Act to Provide for the Licensing of and Against the Evils Arising from the Sale of Intoxicating Liquors." Ill. Rev. Stat. 1874, § 9, p. 438. The present Act is titled: "An Act Relating to Alcoholic Liquors."

⁴ A concise history of the Civil Damage Section of the Liquor Control Act appears in Smith-Hurd, Ill. Ann. Stat., Chs. 43-45, § 135.

⁵ See, 34 Ill. L. Rev. 31 (1939).

⁶ *Cruse v. Aden*, 127 Ill. 231, 20 N. E. 73 (1889).

the end that the health, safety and welfare of the people of the State of Illinois shall be protected and *temperance* in the consumption of alcoholic liquors shall be *fostered* and promoted by *sound* and careful *control and regulation* of the manufacture, sale and *distribution* of alcoholic liquors."⁷ (Italics added.)

As indicative of the legislative intent, modern cases have construed the Civil Damage Section as "remedial" and to be construed so as to "suppress the mischief involved in the reckless dispensing of alcoholic beverages."⁸ Writers on this subject have concluded "in fact there is no fundamental reason why a broad and liberal construction should not control."⁹

Bearing in mind a trend toward greater liberalization of the Civil Damage Section of the Act, a suitor seeking to impose liability against a non-commercial dispenser such as a corporate host is faced with the immediate problem of coming within the terms of the Statute. On the surface the problem would appear easy to overcome, because of the plain and ordinary meaning of the Statute, which says: "*Every person, who shall be injured, in person or property by an intoxicated person, shall have a right of action in his or her own name, severally or jointly, against any person or persons who shall, by selling or giving alcoholic liquor, have caused the intoxication, in whole or in part, of such person; . . .*"¹⁰ (Italics added.)

However, in view of cases arising under this section, the aggrieved party's case appears to be easily attacked by the defendant's motion to dismiss for failure to state a case upon which relief can be granted.¹¹

The nexus of a defendant's motion to dismiss will undoubtedly contain an argument that a non-commercial donor of alcoholic beverages is not liable;¹² that the entire Liquor Control Act has no effect upon those in no way connected with the traffic of liquors;¹³ or that in absence of statute it is not a tort to sell or give intoxicating liquor.¹⁴

The question of liability under the Act of persons other than a commercial dispenser of alcoholic intoxicants was first raised in the case of

⁷ Ill. Rev. Stat. 1959, Vol. 1, Ch. 43, § 94.

⁸ *Klopp v. Benevolent Protective Order of Elks Lodge No. 281*, 309 Ill. App. 145, 33 N. E. (2d) 161 (1941).

⁹ See note 5, *ante*.

¹⁰ See note 1, *ante*.

¹¹ Ill. Rev. Stat. 1959, Vol. 1, Ch. 110, § 45(1).

¹² See note 6, *ante*.

¹³ See note 6, *ante*.

¹⁴ *Meidel v. Anthis*, 71 Ill. 241 (1874).

Albrecht v. People.¹⁵ There a suit was filed against a brewery owner who served beer from his brewery to an individual who had come to his home seeking to purchase real property. The court refused to convict the defendant of disbursement of alcoholic beverage in violation of the Dram Shop Act, saying in its opinion: "The opposing testimony . . . shows quite conclusively . . . that the beer was sent for to the brewery and offered by the defendant to his visitor as an act of hospitality to neighbors and friends It has nothing of the odor of a Dram Shop about it, and was but a mere courtesy, which this law was not designed to reach."¹⁶

A similar result was reached in *People v. Kryl*,¹⁷ in which the court took the position that the laws relating to Dram Shops are to pertain only to those persons directly or indirectly involved in the sale or traffic of intoxicating liquors.

Scant authority in Illinois appears to support the contention that the Liquor Control Act in no way embraces the proposition that non-commercial dispensers of intoxicants are meant to be included within the Act.

On the other hand, another line of authority apparently ignores the question as to whether the Act applies to non-commercial dispensers and maintains instead that the mere giving of liquor as an act of courtesy does not render the donor host liable for civil damages. Perhaps the most widely cited case on this subject is *Cruse v. Aden*.¹⁸ In that case the court refused to hold the defendant host liable because the deceased had a few drinks with the defendant at the defendant's home. The *Cruse Case*, as cited, supports the proposition that the word "giving" in the Act is not intended to apply to purely social drinking situations. However, a close reading of the case reveals that the court said substantially more: "[S]ection 9 of the Dram Shop Act does not apply to persons who are not, either directly or indirectly, or in any way or to any extent, engaged in the liquor traffic, and that the right of action given by said section . . . is not intended to be given against a person who, in his own house, or elsewhere, gives a glass of intoxicating liquor to a friend as a mere act of courtesy and politeness, and *without any purpose or expectation of*

¹⁵ 78 Ill. 510 (1875).

¹⁶ *Albrecht v. People*, 78 Ill. 510 (1875).

¹⁷ 168 Ill. App. 298 (1912). An information was filed against the defendant for selling intoxicating liquors in violation of statute. The defendant maintained a summer residence where he kept intoxicating liquor for the use of his family, himself, and for the entertainment of his guests. Occasionally, beer was purchased from persons on the premises. A finding of guilty was reversed on the theory that the defendant was not in the liquor business.

¹⁸ See note 6, *ante*.

pecuniary gain or profit.'¹⁹ (Italics added.) In later cases, courts have reached substantially the same result.²⁰

In spite of the broad declaration of legislative intent, it would appear that to impose liability upon individual non-commercial dispensers of alcoholic beverages, the aggrieved party must overcome the reported authorities. It should be noted, however, that no case has been reported in Illinois upon this question involving corporate hosts. The limited number of cases does not make it entirely clear whether civil damages can be imposed on persons indirectly involved in the supplying of intoxicating beverages or to persons who have a purpose or expectation of pecuniary gain or profit.

Illinois courts have yet to determine the problem as to whether a corporate host who holds an office "Christmas Party" or conducts a "Hospitality Suite" will be called upon to respond in civil damages.

It is not entirely safe, however, for a corporate host to disregard the effects of the Liquor Control Act. There are indications among the lower echelons of legal activity that courts may be willing to affix liability upon a corporate host by virtue of the fact that the free dispensing of alcoholic beverages by a non-commercial dispenser such as a corporation does engage in quasi-social activities for a purpose and often with the expectation of gain or profit.²¹

There are other considerations which enter into the question of liability of corporate hosts which presumably are persuasive argument in favor of the aggrieved party. The very existence of commercial insurance policies, specifically indemnifying a corporate host for any liability under the Liquor Control Act, is indicative that the balance of judicial opinion as to whether liability will or will not be imposed is extremely tenuous.²²

¹⁹ *Cruse v. Aden*, 127 Ill. 231, 20 N. E. 73 (1889).

²⁰ *Blackwell v. Fernandez*, 324 Ill. App. 597, 59 N. E. (2d) 342 (1945); *Walker v. Dalley*, 101 Ill. App. 575 (1901); *Freeze v. Tripp*, 70 Ill. 496 (1873).

²¹ *Taylor v. Maywood Motor Co.*, Cook County Circuit Court, No. 56C 14432.

²² Illustrative of a form of commercial host liability insurance is one sold by the Continental Casualty Company of Chicago, Illinois which reads in part as follows:

INSURING AGREEMENTS

"I. Coverage

To indemnify the insured against all sums for the payment of which by reason of Sections 14 and 15 of Article VI of an Act of the General Assembly of the State of Illinois, entitled 'An Act relating to alcoholic liquors' in force February 1, 1934, and all laws amendatory thereof, (herein referred to as Illinois Liquor Control Act) the Insured, or the Insured's interest in the Premises described in Item 3 of the Declarations shall become legally liable (whether in Insured's own right or in any fiduciary capacity) to any one who shall, during the policy period, be injured in person or property, or means of support by any intoxi-

Text writers on the subject of Dram Shop insurance have said: "It is expected that, in the not too distant future, Dram Shop insurance questions will compose a sizeable group of decisions. That type of insurance, as such, is comparatively new. It has become exceedingly popular, however, in States possessing Dram Shop Acts, and the type of exclusions contained in such policies make it apparent that litigation is bound to arise It may be anticipated, however, that the Courts, particularly if they have sentiment against the sale of intoxicating liquors, or the circumstances of the case are rather gross, will be rather liberal with the funds of the insurer."²³

In addition to the existence of insurance other so-called persuasive elements seeking to impose liability upon a corporate host are permitted

cated person, or in consequence of the intoxication of any person, provided the Licensee(s) named in Item 1 of the Declarations shall have caused the intoxication, in whole or in part, of such person by the selling or giving of alcoholic liquor in the Premises described in Item 3 of the Declarations.

"II. Defense, Settlement, Supplementary Payments

As respects such Insurance as is afforded by the other terms of this policy, the Company shall

- (A) Upon receipt of notice of any occurrence likely to give rise to a claim under this policy, defend, in the name and on behalf of the Insured, and at the cost of the Company, any civil action which may be brought against the Insured, on account of any claim, even if groundless for which the Company would be liable to the Insured if sustained; but the Company shall have the right to make such investigation, negotiations, settlement or compromise of any claim or suit as may be deemed expedient by the Company; and
- (B) Pay all costs taxed against the Insured in any civil action defended by the Company, and any interest upon that part of the judgment for which the Company is liable under this policy, accruing up to the date the Company has paid, tendered, or deposited in Court the amount for which the Company is liable.

"III. Definition of 'Insured'

The word 'Insured' shall include only the following:

- (A) The 'owner,' as described in Item 1(A) of the Declarations, who shall be any person owning, renting, leasing or permitting the occupation of the Premises, either in his own right or in any fiduciary capacity, or having charge thereof as agent, general lessee, or receiver, but does not include any person engaged in the sale of alcoholic liquors. The terms of this policy, including all conditions and exclusions, applicable to a Licensee shall apply to an insured engaged in selling or giving alcoholic liquors in Premises owned by him;
- (B) The 'Licensee' as described in Item 1(B) of the Declarations, who shall be any person, firm or corporation duly licensed to carry on the business of selling alcoholic liquors in the Premises, in accordance with all laws and ordinances in force where such Premises are located.

In the event of the death, insolvency or bankruptcy of any Insured, such Insurance as is afforded by this policy shall apply to the legal representatives of such Insured, provided, that written notice of the event is furnished to Geo. F. Brown & Sons, Inc., 175 W. Jackson Blvd., Chicago 4, Illinois, within 30 days thereafter."

²³ Appleman, Insurance Law and Practice, § 4507 (1942).

tax deductions,²⁴ as "ordinary and necessary" business expenses. Such expenses, of course, must bear some relation to the taxpayer's business and must be of a character reasonably expected to benefit the business. Expenses for Office Christmas Parties have been determined as an ordinary and necessary expense.²⁵ The presence of a deduction such as this may fall within the language of the *Cruse* and *Kryl Cases* as previously indicated.

Despite reported decisions touching on the matter of non-commercial host liability, in the face of the legislative intent and other persuasive elements, it seems reasonable to conclude a corporate host who conducts an Office Christmas Party or Hospitality Room serving intoxicating beverages will find itself subject to civil damages as a tortfeasor under the Liquor Control Act.

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²⁴ Treas. Reg., § 1.162-1 (1954).

²⁵ CCH. 1959 Stand. Fed. Tax Rep., Vol. 1, ¶ 1340.2681; ¶ 1340.269; ¶ 1340.271; ¶ 1340.2715.